

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

UNITED STATES OF AMERICA

v.

DANTANA TANKSLEY (1)

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4-15-CR- 038-O

SECOND UNOPPOSED MOTION TO CONTINUE JURY TRIAL

Defendant Dantana Tanksley, through undersigned counsel, respectfully asks this Court to continue the trial date of this case. In support, defendant would show the following:

I.

Defendant is charged in one count of the indictment with felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). Count one alleges the punishment provisions of 18 U.S.C. §922(e)(1). The indictment also includes a forfeiture count for the firearm. The Federal Public Defender was appointed to represent the defendant on March 2, 2015. The defendant's case was originally set for trial on April 10, 2015. The defense was granted a continuance of the trial to May 18, 2015, for the purpose of locating a gunshot residue expert. The defense is requesting a second continuance of this case for the reasons set forth below.

II.

Defense counsel has located a gunshot residue expert, Carl Leisinger III, 2140 Pennington Rd. Ewing, New Jersey 08638. Counsel has not yet requested leave to designate Mr. Leisinger as an expert for the reasons discussed in this motion, that is, the government's analysis of the gunshot

evidence is not yet complete. I will be required to forward the government's test results to Mr. Leisinger before I can determine whether the defense even has a trial issue concerning the government's test results. At this time, undersigned counsel has provided to Mr. Leisinger the gunshot residue reports that have been provided by the government. However, as of today, the government is still awaiting additional reports regarding the analysis of the shell casings recovered by the officers and the results of ballistic testing of the firearm in question. All of these tests as well as the results will need to be forwarded to Mr. Leisinger for review.

III.

The defendant is also requesting an additional 30-45 day continuance (until approximately the end of June) for the reason that on April 20, 2015, the Supreme Court heard additional argument in the case of *Johnson v. United States*, Docket No. 13-7120. In *Johnson* the Supreme Court is addressing whether the residual clause of the Armed Career Criminal Act (ACCA) 18 U.S.C. §924(e)(2)(B)(ii) is unconstitutionally void for vagueness. Although there is no way to know for certain whether the residual clause will survive this latest challenge, it appears that the Supreme Court may very well strike down that clause. A decision on this case will likely be reached in June of this year. A decision in this matter greatly affects the defendant's case because at least one of his potential ACCA prior convictions qualifies only under the residual clause. Accordingly, depending on the Supreme Court's decision in *Johnson*, the defendant may not qualify for an enhancement under the ACCA. As this Court knows well, this is a huge factor for a defendant to consider in determining whether to plead guilty or go to trial and in determining whether to accept any kind of plea offer from the government. Under the defendant's circumstance, he cannot possibly make a knowing and intelligent decision regarding going to trial, pleading guilty, or accepting a plea offer

under these circumstances. Specifically, under these circumstances, the defendant cannot know with any certainty what risks he is taking by making any of these decisions. The defendant is requesting a continuance until approximately the end of June so that the defendant will have the benefit of the decision in *Johnson* before making a final decision on these matters.

IV.

Assistant United States Attorney Frank Gatto is not opposed to this motion to continue. Mr. Gatto will be on military orders April 24 through and including April 27, 2015. The government's case agent will be in training April 13 through and including April 27, 2015. Counsel has not been able to contact Mr. Gatto regarding any updates on his potential conflicts. Undersigned counsel has no conflicts of the next 90 days, except he will be at a seminar from May 27, through May 29, 2015.

Wherefore, the defendant respectfully prays this Court to continue the trial of this case and the other trial deadlines for approximately 45 days or to a time convenient to the Court.

Respectfully submitted,
JASON HAWKINS
Federal Public Defender
Northern District of Texas

BY: /s/ Christopher A. Curtis
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CERTIFICATE OF CONFERENCE

On April 27, 2015, I conferred with the attorney for the government, Frank Gatto, concerning his position on this motion, and he was not opposed to this motion. Mr. Gatto will be on military orders April 24 through and including April 27, 2015. The government's case agent will be in training April 13 through and including April 27, 2015. Counsel has not been able to contact Mr. Gatto regarding any updates on his potential conflicts. Undersigned counsel has no conflicts of the next 90 days, except he will be at a seminar from May 27, through May 29, 2015.

/s/ Christopher A. Curtis

Christopher A. Curtis

CERTIFICATE OF SERVICE

I, Christopher A. Curtis, hereby certify that on April 27, 2015, I electronically filed the foregoing motion with the clerk for the U.S. District Court, Northern District of Texas, using the electronic filing system for the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means: Frank Gatto.

/s/ Christopher A. Curtis

Christopher A. Curtis